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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 PEDRO R. DUARTE,

9 *Petitioner,*

10 vs.

11 BRIAN WILLIAMS, *et al.*,

12 *Respondents.*
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Case No. 2:12-cv-01305-JAD-PAL

ORDER

15 Following upon the notice (Doc. 40) of appearance by petitioner's counsel in this
16 habeas matter,

17 **IT IS ORDERED** that the Federal Public Defender's Office is appointed as counsel for
18 petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B), with Jason F. Carr, Esq., appearing as
19 petitioner's counsel of record.

20 **IT FURTHER IS ORDERED** that petitioner shall have until up to and including **120**
21 **days** from entry of this order within which to file an amended petition and/or seek other
22 appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will
23 signify any implied finding as to the expiration of the federal limitation period and/or of a basis
24 for tolling during the time period established. Petitioner at all times remains responsible for
25 calculating the running of the federal limitation period and timely asserting claims, without
26 regard to any deadlines established or extensions granted herein. That is, by setting a
27 deadline to amend the petition and/or by granting any extension thereof, the Court makes no
28 finding or representation that the petition, any amendments thereto, and/or any claims

1 contained therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d 1225,
2 1235 (9th Cir. 2013).

3 **IT FURTHER IS ORDERED** that respondents shall file a response to the amended
4 petition, including potentially by motion to dismiss, within **60 days** of service of the amended
5 petition, with any requests for relief by petitioner by motion otherwise being subject to the
6 normal briefing schedule under the local rules. **Any response filed shall comply with the**
7 **remaining provisions below, which are entered pursuant to Habeas Rule 4.**

8 IT FURTHER IS ORDERED that any procedural defenses raised by respondents to the
9 counseled amended petition shall be raised together in a single consolidated motion to
10 dismiss. In other words, the Court does not wish to address any procedural defenses either
11 in *seriatum* fashion in multiple successive motions to dismiss or embedded in the answer.
12 Procedural defenses omitted from the motion to dismiss will be subject to potential waiver.
13 Respondents shall not file a response in this case that consolidates their procedural defenses,
14 if any, with their response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any
15 unexhausted claims clearly lacking merit. If respondents do seek dismissal of unexhausted
16 claims under § 2254(b)(2): (a) they shall do so within the single motion to dismiss **not** in the
17 answer; and (b) they shall specifically direct their argument to the standard for dismissal under
18 § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short,
19 no procedural defenses, including exhaustion, shall be included with the merits in an answer.
20 All procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

21 **IT FURTHER IS ORDERED** that, in any answer filed on the merits, respondents shall
22 specifically cite to and address the applicable state-court written decision and state-court
23 record materials, if any, regarding each claim within the response as to that claim.

24 **IT FURTHER IS ORDERED** that petitioner shall have **30 days** from service of the
25 answer, motion to dismiss, or other response to file a reply or opposition, with any other
26 requests for relief by respondents by motion otherwise being subject to the normal briefing
27 schedule under the local rules.


28 **IT FURTHER IS ORDERED** that any additional state court record exhibits filed herein

1 by either petitioner or respondents shall be filed with a separate index of exhibits identifying
2 the exhibits by number. The CM/ECF attachments that are filed further shall be identified by
3 the number or numbers of the exhibits in the attachment.

4 **IT FURTHER IS ORDERED** that the Court's prior order (Doc. 39) is **MODIFIED IN**
5 **PART** as follows: **The hard copy of any exhibits filed by either counsel shall be**
6 **delivered -- for this case -- to the Clerk's Office in Reno.**

7 The Clerk shall SEND a copy of this order to the CJA Coordinator for this division.

8 Dated: April 23, 2014.

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12 JENNIFER A. DORSEY
13 United States District Judge
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